

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Home

Home—General Division

Notification

No. CEP/GDD/440/98

Read:- Notification No. CEP/GDD/440/98/26 dated 21-4-1999.

Whereas vide application dated 11-5-1995, Smt. Ricardina da Silva Noronha had requested to release the properties of Southern half of Maem which had been declared as evacuee by order dated 14-11-1967 and the Notification dated 14-12-1967, published in Official Gazette, Series III No. 4, dated 4-1-1968.

And, whereas considering all the circumstances of the case, the Custodian vide Order dated 16-9-1997, disposed off the said application dated 11-5-1995, as not maintainable.

And, whereas the Custodian thereafter had reconsidered his own Order dated 16-9-1997, declaring the Southern half of Maem as Non-Evacuee, without any jurisdiction under the Goa, Daman and Diu Administration of Evacuee Property Act, 1964 and the Rules framed thereunder.

And, whereas, the Custodian of Evacuee Property vide Notification No. CEP/GDD/440/98/26 dated 21-4-1999, published in Official Gazette, Series III No. 5 dated 29-4-1999 had declared the Southern half of Maem Property as Non-Evacuee Property.

And, whereas vide application dated 9-8-1999, Shri Antonio Sequeira Coutinho Pereira, legal representative of Maria Elsa, has claimed that Notification No. CEP/GDD/440/98/26 dated 21-4-1999, is bad in Law lacks proper application of mind and the same is defective and hence, has prayed that the said Notification be revoked.

And, whereas, the matter had been carefully considered by the Government and it was found that there are legal infirmities in the said Notification as detailed below:-

- a) The Property by name of Southern half does not exist;
- b) The said Southern half has not been identified by name, registration numbers, matríz numbers, survey numbers, etc.;
- c) The bequest by Will dated 17/18-4-1929 of Southern Lote to Eurico was conditional and has been challenged and claimed by Smt. Maria Elsa, the predecessor of Shri Antonio S. C. Pereira;
- d) The title to the Southern Lote is in dispute before the competent Civil Court in Special Civil Suit No. 154/93/A and therefore attracts provisions of Clause (c) of Section 15 of the Administration of Evacuee Property Act, 1964.
- e) That Smt. Richardina's claim to the Southern half is on the basis of Partition Deed dated 9-12-1993 between her and her children. Although Smt. Richardina has acquired Indian citizenship, her children are Portuguese nationals and have been declared to be evacuees by Order dated 14-11-1967. Permission was not sought from the Custodian in terms of Section 31, 32 of the said Act;
- f) The Notification dated 21-4-1999 does not describe name of properties, registration numbers and areas;
- g) That Dr. Fernando Noronha Wolfango Silva and his wife Smt. Maria Elsa Noronha Wolfango Silva, were the only ones to be declared Non-Evacuees and Indian Nationals and the properties in question were taken over by the Custodian from their possession.

And, whereas the Custodian has no authority in Law, after rejection of the application of Smt. Richardina Silva Noronha dated 5-11-1995 to reconsider and/or review his own Order dated 16-9-1997.

And, whereas the Custodian could not declare and issue the aforesaid Notification since there is admittedly a title dispute pending disposal before the competent Civil Court between the same parties.

And, whereas the Custodian has patently erred in reviewing his own Order and issuing the above mentioned Notification dated 21-4-1999, after having rejected the initial application dated 5-11-1995 by Order dated 16-9-1997 as not maintainable, suffers legal infirmities and is unsustainable in Law and totally unauthorised even in powers and lacks jurisdiction.

And, whereas it is improper for the State or the Custodian to take sides and return the properties to any party, nor is it proper for the Custodian to decide the title dispute. On

this ground also the above cited Notification dated 21-4-1999 becomes unsustainable in Law, unless the dispute is decided by the competent Court on merits. Until such time, the properties should remain vested in the Custodian.

Now, therefore having examined the matter in totality, the Government is pleased to declare Notification No. CEP/GDD/440/98/26 dated 21-4-1999, published in Official Gazette, Series III No. 5 dated 29-4-1999 as invalid, Non-Est. and Null and Void; with immediate effect.

By order and in the name of the Governor of Goa.

Panaji, 14th February, 2000.— The Under Secretary (Home), A. Mascarenhas.